

A CIVIL LIBERTY OR SEXUAL EXPLOITATION: REVENGE PORN?

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ABSTRACT

“Revenge porn” is commonly used to describe the distributed digital and print publication of an individual in a nude state without the individual’s consent. Section 230 of the Communication Decency Act is a Federal Act protecting web distributors from legal repercussions if revenge porn materials are uploaded on their websites. However, currently there are no federal provisions for victims of revenge porn. Currently, state statutes are the main method of legal action that victims may use to combat their perpetrators. 94% of Americans state that they believe their sexually charged photographs are safe with their significant other. However, 60% of partners admit to distributing the sexually exploitive photographs of their partner. The current study is a content analysis designed to explore current state legislation to depict how revenge porn is classified, consent is defined, and victims are protected via the various forms of penalties and sentences ascribed to the perpetrators.

DEDICATION

This thesis is dedicated to my fiancé, Dallas Cole, who has dealt with the majority of the mental breakdowns surrounding this work, encouraged me and pushed me to be the best that I can be. Additionally, this thesis is dedicated to my family, specifically my parents, who have accepted my choice in research and allowed me to discuss my findings at family gatherings. Also, this thesis is dedicated to my loving and kind friends Valerie Gallimore, Tessa Johnson, Lisa Robertson, Erin Moniz, and Drs. Kim and Jeff Eckert, who have walked through this season of my life with me while I wrote this thesis. Further, this thesis is dedicated to all the individuals who have unfortunately experienced the negative effects of being victims of revenge porn. Hopefully, one day victims' rights will be as strong as the federal protections that web distributors have attained.

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CHAPTER I

INTRODUCTION

Pornography has existed for centuries, but there are divisions among the public with regard to acceptance and perceptions pertaining to the creation, publication and distribution of sexually explicit material. Whereas opinions and perceptions vary in the United States, the civil liberties pertaining to freedom of speech and publication do not, thus permitting the creation and distribution of sexually explicit photographs legally (United States Constitution, Amendment I). Yet, the creation and distribution of sexually explicit images becomes suspect when no attention is given to the issue of consent among the parties featured in the photographs except for parties featured in child pornography. The intersection between pornography and civil liberties in the United States has been given more deliberation as technological advances have exposed the use of unconsented pornographic images on digital platforms. Section 230 of the Communication Decency Act was established in 1996 with the sole purpose of extending First Amendment rights and civil liberties onto the internet (47 U.S.C. § 230). As the extension of civil liberties has advanced, so has the circulation of pornographic images, due in large part to the speed and ease with which one may publish such images, a phenomenon made possible by the internet.

While the progression of the internet has aided in technological advancements, it has also enabled the print and technologically distribution of sexually explicit photographs and videos without the consent of the individual featured in the photography, more commonly known as *revenge porn*. More specifically, revenge porn refers to situations where a sexually explicit

image and/or video of a person is posted online and/or throughout other mediums of media without that person's consent and is typically motivated by the perpetrator's desire for revenge or harassment (Merriam-Webster, 2016). The ever-increasing efficiency of the internet has aided in the ease and speed of publishing and circulating such material, which inevitably leads to less reflection on the short-term and long-term consequences of distributing these photographs. Currently, only 34 states in the United States have laws that specifically address revenge porn, which is inadequate considering that revenge porn victims may suffer from significant emotional and physical trauma (Branch, Johnson, & Dretsch, 2015).

Illustrating the extreme nature of this phenomenon, a case in Wyoming involved a woman whose ex-boyfriend posted an advertisement online with a sexually explicit photograph of her accompanied by her address, stating she was seeking an individual to fulfill a rape fantasy (Branch et al., 2015). The potential dangers (e.g., stalking, personal information of the victims being released) of revenge porn has also been empirically studied. More specifically, a study of 1,244 individuals emphasized the physical risk that revenge porn victims face, with 50% of victims reporting that their full names and social media accounts were attached to their sexually explicit photographs. In addition, 20% of victims had their phone numbers and email addresses disclosed with their photographs (Citron & Franks, 2014). Moreover, 80% of revenge porn victims have stated that they experienced anxiety and extreme emotional distress as a result of their sexual cyber harassment (Eaton, Jacobs, & Ruvalcaba, 2017). Utilizing a content analysis methodology, this study aimed to explore characteristics of state legislation relating to revenge porn in order to determine how these statutes affect revenge porn victims' rights and privacy.

CHAPTER II

LITERATURE REVIEW

The following sections of this paper emphasizes the current legislation pertaining to consent, privacy, and pornography through an analysis of: (1) the prevalence and consequences of revenge porn (2) how legislators, scholars, and researchers have evaluated and aided in the implementation of privacy and consent as these concepts relate to photographic images and First Amendment rights (e.g., the Communication Decency Act) in application to pornography laws and (3) how legislation and case law address the needs of victims and provide for the punishment of revenge porn offenders.

Prevalence and Consequences of Revenge Porn

The distribution of sexually explicit photographs is not uncommon. In fact, 45% of women and 57% of men report that they received sexually explicit photographs in 2012 (Match.com, 2013). Studies suggest that Americans believe their nude photographs are safe with their significant others; for example, one study indicated that 94% of Americans trust that their nude photos are safe in their partners' possession (Bloom, 2014; Kamal & Newman, 2016, p. 361). Likewise, persons in an exclusive, committed, and "romantic relationship are more likely to sext than those not in a relationship" (Coskunpinar, Steiner, & Cyders, 2013; Bates, 2016, p. 24), which typically includes the transmission of both sexually explicit messages and images. However, the safety and security of such photographs are not as guaranteed as many Americans believe. Specifically, studies indicate that 60% of significant others have sent out their partners' sexually explicit photographs, and 10% of partners have threatened to send out the nude

photographs they have in their possession (Cyber Civil Rights Initiative, 2014; Kamal and Newman, p. 361). Moreover, research identified that 90% of victims are women (Cyber Civil Rights Initiative, 2014), demonstrating how specific groups are more affected by revenge porn than others.

Revenge porn victims face and experience similar emotional, psychological, and physical reactions as those who have been sexual assaulted and abused (Stebner, 2014; Woolley, 2013). Further, research suggests that the psychological and physical damage that the publication and broadcasting of pornographic images may elicit can be permanently damaging to an individual's reputation, career, self-image, and sense of worth (Stebner, 2014; Woolley, 2013). Jacobs (2016) found in a qualitative study of multiple revenge porn victims that many of them compared their experiences to those who had experienced a physical, sexual assault. Some victims reported dealing with their victimization with self-harm and in some cases, they even found instances of victims' suicides (Stebner, 2014; Woolley, 2013). Likewise, the Cyber Civil Rights Initiative (2014) studied revenge porn victims and found that 80% experience "severe emotional distress and anxiety" (n.p.). Additionally, 80 to 93% of revenge porn victims suffered emotional distress ranging from shame, hopelessness, and paranoia to suicidal ideation after the release of their nude photograph(s) (Linkous, 2014).

Research conducted by Bates (2017) examined the mental health state of revenge porn victims also discovered that the psychological effects reported by victims of revenge porn are similar to victims of rape and molestation. Similarly, in an earlier study, Bates (2016) highlighted that revenge porn victims' coping mechanisms, like self-medication, denial and avoidance, are similar to those of rape and molestation survivors. Bloom (2014) recommended that the resources and treatments available to rape survivors be provided to revenge porn victims

because both sets of victims engage in similar coping behavior and exhibit similar reactions to their victimization experiences (Boeschen et. al, 2001).

Other research has compared revenge porn victims' feelings and reactions to those of children who have been featured in porn, and this line of inquiry has identified significant similarities between these groups, such as feelings of hopelessness and depression (Rogers, 2008). Rogers (2008) analyzed individuals who had been forced to appear in pornographic child materials and found the majority reported struggling with depression, anxiety, and feelings of worthlessness, thereby, further highlighting the similarities between revenge porn victims and another group of victims who have been subjected to sexual experiences in which they did not consent.

Along with having similar negative mental health effects as other forms of sexual victimization, 49% of victims stated that they have been cyberbullied, cyberstalked, and/or cyber harassed by those who have accessed and viewed the photographs that they have been featured in online (Cyber Civil Rights Initiative, 2014). Kamal and Newman (2016) illustrated the fact that many revenge porn victims feel humiliated and powerless, which they contend is potentially correlated with the inability to combat cyberattacks ranging from cyberbullying to cyber harassment. Moreover, the negative mental health consequences affect victims' long-term relationships and ability to preserve public perceived character (Hoffmeister, 2016). Likewise, Hoffmeister (2016) discovered in this case study that victims often felt shame, fear, and embarrassment, which often lead to feelings of depression and isolation.

The Tension: Section 230 of Communication Decency Act, Consent, and Revenge

The emotional distress experienced by many victims is seemingly at odds with media portrayals of them. Albury and Crawford (2012) found that most media coverage of the release of an individual's sexually explicit photographs is portrayed with the notion that individuals, specifically women, who send nude photographs are cavalier and would send these types of photographs to the public. Samimi and Alderson (2014), however, found that women are more likely to send sexually explicit photographs to those they trust, which suggests they only consented to the original recipient's viewing of the explicit material and not necessarily to sharing the photographs or videos with others beyond the original recipient. In high profile cases, in particular, media sources have often highlighted the fact that victims of revenge porn were originally willing participants (Linkous, 2014), which may work to minimize the damage done to victims of revenge porn. Scholars and legislators have argued that intent of the distributor must be examined before anyone is convicted (Linkous, 2014). The burden of proof relies on the statement of the defendant, who is more inclined to be dishonest about his/her intent if it was meant for malice. This is because the defendant could potentially face criminal charges depending on the specific legislation in the state that the defendant is being charged in. So it is in the best interest for the defendant to be dishonest about his/her true intentions, especially if the intentions were malicious.

As will be demonstrated below, current legislation does not adequately address revenge porn victims or their perpetrators due to the absence of federal laws pertaining to revenge porn. The lack of federal laws addressing this issue makes it difficult to provide legal relief for victims, even though many of these cases fall under federal jurisdiction due to the medium (i.e. the internet) used to distribute the images. Further, Hoffmeister (2016) found that at the time of his

case study only 13 states had laws specifically pertaining to revenge porn with each state's statutes varying drastically. With the lack of federal and state legislation, many revenge porn victims are forced to try their cases using legal precedent such as *Wood v. Hustler Magazine Inc.* (1984), the Privacy Act of 1974, and the Video Voyeurism Prevention Act of 2004 (18 U.S. Code § 1801). Although the laws stated above along with tort law and copyright law can allow for additional legal claims, Section 230 of the Communication Decency Act has aided in the defense of those who have used, shared, or disturbed revenge porn (47 U.S.C. § 230). Furthermore, inadequate legislation and conflicting laws cause an unfair judicial environment with not all revenge porn victims receiving the same justice for their case. For example, Minnesota has criminalized revenge porn and classifies it as a gross misdemeanor while South Carolina has not implemented a statute against revenge porn to date (Minn. Stat. § 617.261.). This comparison emphasizes the unequal treatment of victims and their perpetrators across geographical locations.

Legislators have tried to give citizens more control over the distribution of their physical and mental health information based on privacy concerns, including protecting individuals from being sexually exploited with laws such as the Privacy Act of 1974, which makes it a crime to disclose the private records of any other citizen without their consent (5 U.S.C. § 552a). Similarly, the Video Voyeurism Prevention Act of 2004 prohibits the intentional recording or distribution of other individuals in sexually compromised and/or nude states without their consent (18 U.S. Code § 1801). Even with these laws established, in practice, researchers, scholars, and legislators have found gaps in protection for those who have been sexually exploited with the use of their photographs.

Consent is at the center of debate with the focal point on authorization to distribute sexually-explicit images. While revenge porn victims may have given an individual access to their sexually explicit images at one point, the permission given to that individual to view these images does not equate to permission to distribute them in any way. Moreover, if an individual is unaware of his/her photograph being produced and disseminated, the federal Video Voyeurism Prevention Act of 2004 is supposed to protect them, at least theoretically, if not practically (18 U.S. Code § 1801).

It is important to note that the internet did not start the problem of the unauthorized use and distribution of an individual's unconsented nude photographs. In 1980, Hustler exploited pornographic images of females who were non-consenting models (*Wood v. Hustler Magazine Inc.*, 1984). The women who were featured in the magazine were willing participants in the creation of the sexually explicit photographs; however, they did not consent to their photographs being published in *Hustler Magazine* (*Wood v. Hustler Magazine Inc.*, 1984). That being said, the advent of the internet provided a new outlet for the dissemination of sexually explicit images that may not involve the consent of the party(ies) depicted. Further, the internet has enabled individuals to violate others' privacy and spread information at higher levels of speed compared to other methods of dissemination, namely print media that were commonly used in the past.

Legislation has been enacted to protect victims from being negatively featured in the public sphere, like graphic spreads, with civil court cases based in tort and copyright laws. Civil court cases allow the plaintiffs to present their cases and potentially receive financial compensation. However, in order to receive copyright compensation, the individuals must already own the rights to their photographs. Unlike copyright laws, tort law claims can be pursued when it pertains to the public's interest because tort law heavily relies on the public's

viewing of the disclosed private information. Thus, the quintessential factor for tort law to be applied in a case is the victim's and the public's viewing and reaction to the private materials disclosed. This provision ultimately allows the court and/or jury to decide which revenge porn victims deserve justice, which is not justice but opinion (Citron & Franks, 2014).

Despite issues with its application, tort law has been successfully pursued by revenge porn victims. Kamal and Newman (2016) completed a qualitative examination of revenge porn legislation by studying state and federal revenge porn cases and discovered that most victims were protected under the "torts of defamation, invasion of privacy, public disclosure of private fact, and intentional infliction of emotional distress" statutes or common law also known as tort law (p. 363). However, they found that the legal process that each of the victims had to endure was extensive and expensive making it almost financially impossible for a middle class American citizen to combat his/her aggressor(s) (Kamal & Newman, 2016, p. 393). Citron and Franks (2014), identified a similar finding when they analyzed tort law. When tort law was used by revenge porn victims it was only successful on a small scale, and mainly only with individuals who have the financial resources to hire a lawyer for civil suits. According to Citron and Franks (2014), many plaintiffs lack the financial resources to file a civil suit due to loss of employment because of the online revenge porn posts.

It is important to acknowledge that the success of a civil suit in the revenge porn plaintiff's favor does not guarantee an efficacious removal of the pornographic image on the internet for the plaintiff. The legal system is not adequately set up to aid revenge porn victims and the current legalization makes pursuing a criminal case extremely difficult for victims to combat their offenders. Moreover, plaintiffs would have to copyright their personal photographs to combat the Communication Decency Act because websites are not required to remove any

pornographic photographs under this statute unless the photographs were copyrighted (47 U.S.C. § 230; 17 U.S. Code § 512). Copyright law allows revenge porn victims to use the Federal Intellectual Property claim that “nothing in this section shall be construed to limit or expand any law pertaining to intellectual property” (47 U.S. Code § 230 (e)(2)); this allows and permits a victim to file a § 512 notice after registering the copyright in order to remove the victims’ photography or video from a website (Citron & Franks, 2014, p. 357). According to copyright law, as long as the website or internet source removes the copyrighted photograph then the source is not liable (17 U.S. Code § 512). Yet, copyright laws do not aid victims of revenge porn who did not independently produce the photograph themselves. More specifically, Bambauer (2014) found in a legal analysis that if the revenge porn victims did not produce the pornographic image themselves then they were unable to legally copyright the photograph. This means that the website, web domain, and independent internet sources were free to continue to feature the image online legally.

The Radical Feminist Framework

Feminist theoretical perspectives appear to be the most applicable in analyzing revenge porn and statutes related to this offense due to the greater number of women affected by revenge porn compared to men. There are several competing feminist theories in the literature that analyze and attempt to explain violence against women. More specifically, the traditional or conservative feminist perspective maintains that gender inequality among the sexes arises from the biological advantages that males have over women. Liberal feminism theoretically copies the political liberal view, which embraces the idea that all humans deserve equality, dignity, liberty and justice, so they do not believe that men have advantages over women (Cullen, Agnew, &

Wilcox, 2014). More direct than the traditional feminist perspective in identifying the physical as well as emotional and psychological victimization that women face is radical feminism.

Radical feminism contends that women's liberation can only be fully embraced through the expression of one's thoughts, emotions and relationships but, since males dominate the social structure in most societies, women's liberation is usually not fully embraced. Additionally, radical feminism argues that gender functions as a tool of dominance and women's biological composition functions as a tool for the patriarchal system (Cullen, Agnew, & Wilcox, 2014). More specifically, the patriarchal system referred to by radical feminists explores the ways in which societies establish and organize male privilege in the hierarchy of society, which place males at the top of the organizational arrangement in societies (Barak, Leighton & Flavin, 2010). The patriarchal system in the United States can be observed through legislative efforts that dismiss the victimization experiences of women, as well as through gender-based forms of violence, namely sexual victimization and intimate partner violence, 85% of which is perpetrated by males and directed at women (Association of Women's Health, Obstetric and Neonatal Nurses, 2015). According to the radical feminist perspective, this physical and emotional violence, so often minimized or dismissed, is the means by which men assert dominance and control women. Indeed, of the feminist perspectives, radical feminism appears to be the most applicable theory when it comes to understanding why revenge porn is not universally criminalized in the United States.

The use of radical feminism is not to discredit other feminist perspectives. Moreover, traditional, liberal, and radical feminist theories all address social injustice and advocate for social equality among males and females in society. An example of this is how traditional feminism attributes inequality between males and females to biological differences, a theory

which has its merits, but falls short of thoroughly analyzing the possible reasons why women are the main victims of revenge porn. Additionally, liberal feminist theory acknowledges the social and political disadvantages that women experience compared to males, yet fails to analyze the means by which males may apply social constraints upon females to hold them in a specific social class. Revenge porn is an oppressive act that males use against women, which can be seen through the fact that 90% of revenge porn victims are women (Hinduja, 2017). In light of the revenge porn statistics illustrating that women are far more likely than men to be victims of revenge porn, coupled with the fact that victims often lack the legal means to combat their (usually male) perpetrators, it is a fair assessment to use a radical feminist framework to analyze how society and government have failed to provide adequate criminal punishments for those who violate others in this manner (Cullen, Agnew, & Wilcox, 2014).

Radical feminism is mainly focused on observing the lack of governmental support that women receive due to socially constructed norms established by men. Moreover, radical feminists argue that laws and legislation are constructed to favor and reinforce patriarchy so that men can maintain their status in society and control a group of individuals who they deem as inferior – in this case, women (Barak et al., 2010). As noted, there are several tools that men use to maintain their position over women, particularly violence against women. Considering the vast differences in victimization rates by gender for revenge porn, it is clear that this is another tool used to maintain power over women. Moreover, when taking the emotional toll that victims face into account and how similar it is to other forms of violence against women, the use of revenge porn as a tool to maintain patriarchy becomes more evident. For example, approximately 57% of victims of revenge porn noted that the photographs were posted by an ex-boyfriend (Cyber Rights Initiative, Inc.). Literature indicates that oftentimes when women leave unhealthy

relationships, their partners may lash out (Smith et al., 2017). Studies on revenge porn indicate that the perpetrators abilities to lash out are not limited to physical damage, they can also target the person emotionally and psychologically. The release of these photographs can also cause real damage and severe consequences for other areas of the woman's life, such as losing her job and livelihood (Smith et al., 2017).

The apparent gender disparities in revenge porn victimization and perpetration mirror the patterns we see in intimate partner violence research. More specifically, Smith and colleagues (2017) found that 47.1% of female rape victims stated that the perpetrator of their rape was a former intimate partner. Additionally, 1 out of 15 women stated that they had experienced one of the following negative experiences by an intimate partner: physical violence, sexual violence, and/or stalking (Smith, Chen, Basile, Gilbert, Merrick, Patel, Jain (2017). Likewise, 68.1% of female victims stated that threats of physical harm came from a current or previous intimate partner. Given the mass public attention to the issue and apparent physical consequences associated with intimate partner violence, it is not entirely surprising that this form of violence against women has been subject to greater legislative action compared to revenge porn victims. That does not mean, however, that revenge porn victims are not victims because they are not physically harmed; victims of revenge porn suffer different types of harm. For example, one study found that 49% of revenge porn victims reported being harassed or stalked (Linkous, 2014). Likewise, 80% of victims stated that they experienced emotional distress (Linkous, 2014), thus highlighting this offense's similarity to intimate partner violence. Revenge porn is arguably a new form of oppression for males to use to assert gender order in society. The United States has historically used patriarchy to control females solely based upon their sex (Schneider, (1992). Furthermore, women have been subject to oppression through economic, political and

social decisions made based solely upon the sex in which the individual was born (Barak et al., 2010).

Moreover, Mackinnon (1989) asserted that the political system uses its power to exploit women economically and sexually by objectifying them via emotional and physical means, which is quite possibly why forms of sexual victimization (i.e. intimate partner violence and revenge porn) are commonly used forms of oppression for women. Mackinnon (1989) further argued that gender as a social system is divided between males and females, and it functions in favor of males, therefore, affording males more power in the political system. When a specific group of individuals has more power, those individuals will be more concerned with issues that affect them, which is quite possibly why “women’s issues” such as abortion, porn, rape revenge porn, and other forms of gendered discrimination are not subjected to extensive legislative and criminalization efforts. Schneider (1992) stated it best in her analysis and deconstruction of liberal feminism arguing that women have implicitly become “an interest group within pluralism, with specific problems of mobilization and representation, exit and voice, sustaining incremental gains and losses” (p. 160). The connection and tension between the experiences that women have in the criminal justice system as victims and the policies, as well as theories implemented to combat and protect them flow out of the power mainly established by their male counterparts (Schneider, 1992). Thus, this framework is especially practical and useful in analyzing and comprehending why revenge porn statutes and laws are constructed and act in the manner in which they materialize.

Summary

In summary, the criminalization of revenge porn and protection of revenge porn victims has involved a combination of laws and policies, like tort law, copyright laws, precedent from civil and criminal court cases, and Section § 230 of the Communication Decency Act. It is important to note that not all pornography cases are this complex. In fact, the Supreme Court in *New York v. Ferber* (1982) stated that in all child pornography cases, whether in print or online, the capturing, retaining and distribution of child pornography is illegal because of the harm and abuse it imposes upon children. Furthermore, one of the main arguments of the Supreme Court in this ruling was a child's ability to consent in the production and distribution of these types of photographs (*New York v. Ferber*, 1982). A related point to consider is differences in the emotional, mental, and physical maturation of an adult and a child regarding sexual acts and consent. Despite the differences between the two groups, similar provisions need to be made for adult victims who do not provide consent because this is akin to other forms of sexual victimization.

CHAPTER III

METHODOLOGY

The current study is built upon a content analysis methodology to provide a descriptive analysis of revenge porn statutes in the United States. It is vital to examine the current state of revenge porn legislation across the United States in order to determine the degree of protection provided to U.S. revenge porn victims. More specifically, the current research relied on a content analysis to explore existing substantive laws related to revenge porn in each state with attention to the definition of this form of criminal behavior and elements of this specific offense as outlined by each state. Further, the study examined criminal penalties and punishments afforded to those who disseminate pornographic images without the consent of those portrayed in the photographs or videos. The study addresses the following research questions:

- (1) How do states define consent in their revenge porn statutes?
- (2) How do states define revenge porn in their statutes?
- (3) What are the penalties for the unlawful dissemination of sexually explicit images?

Data and Sample

The data for the current research was collected between the months of June 2017 and October 2017 with the last day of collection being held on October 12, 2017. All states and the District of Columbia were selected for this study to achieve a full representative sample of all the state statutes within the United States. The current study is built upon a manifest content analysis of the laws, which is an analysis aimed at examining the surface, tangible content of a particular social artifact (Field, 2013). In this case, the data is used to analyze the basic content of

legislation pertaining to revenge porn in the United States. The manifest content analysis in this study is accomplished by analyzing the characteristics of the state laws which range from the title of the state statute, each individual state definition of revenge pornography, consent and dissemination, and the punishments associated with violating the state statute. Coding of the state statutes was thoroughly examined by the primary researcher, as well as an additional researcher involved in the study to ensure that the coding scheme was thorough and consistent. There were 51 data entry forms completed by the primary researcher. The data entry forms included information pertaining to each state's and/or district's legislation and/or statutes pertaining to revenge pornography. All data entry forms were administered and completed to the fullest capacity by the researcher based on the nature and content of each state's law. A variety of variables were coded to assess characteristics of each state, as well as features of each state's revenge porn legislation. The state's/district's region in the United States, as well as whether the state had enacted legislation to address revenge pornography were also variables examined in the current study. Additionally, variables were created to explore how states define key elements of this specific offense with special attention to how states define dissemination and consent. Finally, the criminal penalties for the dissemination of revenge porn were coded for each state.

Measures

Characteristics of States

Region of U.S. Region was measured on a nominal scale using the United States Census Bureau division of each region (Appendix A). The region was measured as West US (1), Midwest US (2), Northeast (3), South US (4) or Pacific US (5).

Presence of Revenge Porn Statute. The acknowledgment of revenge porn as a crime is measured through the establishment of a revenge porn statute in a state which is measured on a nominal scale from No (0) to Yes (1).

Characteristics of Statutes

Title of Statute. Given that some states do not have revenge porn statutes, it was of interest to see how revenge porn is defined by states that do have revenge porn statutes. In order to try to identify how these states view this offense, the name or title of the revenge porn statute was coded. This allows for an assessment of how states classify or view this type of offense similarly to other forms of sexual offenses, or reveal important distinctions that state legislatures make between revenge porn and traditional crimes. This variable was measured on a nominal scale with the following categories: Harassment (1), Violation of Privacy (2), Disclosing/Dissemination of an Intimate Image (3), and Other (e.g., Unlawful Publication). (4).

Other Characteristics of State Laws. States often provide specific definitions of key aspects or concepts related to a criminal offense. In this case, key concepts that may be defined and are relevant to the dissemination of revenge porn revolve around what is deemed as consent and dissemination. To analyze how/if states define these concepts, variables were included in the coding form to assess whether states explicitly defined *dissemination/distribution*, described what is considered a *sexually explicit photograph/image*, and mentioned the notion of *consent*. With regard to consent, statutes were also examined to determine if the law went on to *explicitly define consent* and if this definition of consent *specifically referenced consent to disseminate the sexually explicit image*. All of these characteristics were measured on a nominal scale measured from No (0) to Yes (1).

Additionally, to assess the entire scope of the law, variables were included to assess *if there are not revenge porn statutes within a state, are there cases where victims have used other statutes to combat their perpetrators?* These characteristics were measured on a nominal scale with codes for Harassment (0) and Other (1). Regarding precedent cases, statutes were also examined to determine if *the law mentioned another crime*. This characteristic was measured on a nominal scale measured from No (0) to Yes (1). Additionally, statutes were specifically examined to assess *if the law does mention another crime or civil law (i.e. tort law) within the revenge porn statute, what crime or tort law is mentioned?* These characteristics were measured on a nominal scale and measured as follows: Tort Law (0), Sexting (1), and Stalking (2).

Penalties for Dissemination of Revenge Porn. Given the variety of punishments for revenge pornography, it was of interest to see how punishments for revenge pornography are distributed among the various states. In order to try to identify how these states view this offense criminally, the severity of the punishment was coded. This may allow for an assessment of how states view the severity of this crime, which may be comparable to similar forms of sexual offenses (i.e. intimate partner violence). Thus, a variable was created that assessed *the highest possible classification of punishment* outlined by the law for this specific offense. This variable was measured on a nominal scale with the following categories: Misdemeanor (0) or Felony (1).

Jurisdictional information was also analyzed to examine if states were able or willing to extradite offenders. This characteristic was measured on a nominal scale measured from No (0) to Yes (1). States often apply additional criminal penalties for perpetrators found guilty of disseminating revenge pornography when a case exhibits specific characteristics. In this case, upon reviewing the laws, it was apparent that it was important to examine provisions for repeat offenders. *Provisions for special sentencing in the case of repeat offending* was assessed to

examine the severity of the punishments for offenders who are charged with the dissemination of revenge porn on multiple occasions. To gauge the existence of these special sentencing provisions, statutes were coded on a nominal scale with responses of No (0) and Yes (1). To further analyze these provisions, a measure was created to examine *specific penalties for repeat offending*. This variable was measured on a nominal scale with the following categories: offense graduates to a felony (0) and other additional penalty specified that is not a felony classification (1).

Analytic Plan

The only analyses estimated were univariate descriptive statistical analyses to compare the characteristics of state statutes. Bivariate and multivariate analyses were not utilized because of the nature of the data. This study aimed at exploring the content of the laws which limits the types of analyses that are available to the analyst. In particular, only 34 states have revenge porn statutes. This low number of cases poses issues for most statistical tests. Due to the low volume of cases, specific state laws were used to illustrate the patterns identified by this content analysis. These laws illustrate the differences between definitions found across statutes, such as varying conceptualizations of sexually explicit photography and consent.

Results and Statistical Analysis

The findings related to the characteristics of each state are illustrated in Table 1. To display how states were classified in different regions, the top section of Table 1 provides the frequency distribution for each region. As shown, the Western region of the U.S. represented 26.5% of states, the Midwest represented 20.6%, the Northeast represented 17.6%, the South represented 29.4%, and the Pacific represented 5.9% of the states in the United States. Out of all states' examined, 2/3 had a specific revenge porn statute while 1/3 did not.

Table 1 States With Revenge Porn Statutes and the Regions in Which They Reside

Variables	(N)	%
Region		
West US	9	26.5
Midwest US	7	20.6
Northeast US	6	17.6
South US	10	29.4
Pacific US	2	5.9
Revenge Porn Statute		
Yes	34	66.7
No	17	33.3

The frequency distribution for the characteristics of statutes are presented in Table 2. As shown in the table, the title of the law in each state was examined because the title of the law/statute conveys a certain denotation in its application and the ability for a victim to apply the law in the victims’ specific case. Approximately 78% of states with revenge porn statutes identified this offense as “Dissemination/Disclosing of an Intimate Image,” 11.8% of states classified their revenge porn statute as “Harassment,” 8.8% classified their statute as “Violation of Privacy,” and 11.8% of states used another name for their revenge porn statute. The definition of “Dissemination/Disclosing of an Intimate Image,” which is used by most states as a title for their statute, varies significantly in definition and practice, along with the rest of the titles of statutes. An example of this is how Michigan has labeled its state statute against revenge porn as

“Dissemination of Sexually Explicit Visual Material of Another” (M.C. L.A. § 750. 145e.). In comparison, harassment, or as Florida labels its statute, “Sexual Cyber harassment,” is a very specific title for this type of legislation which can be viewed as more appropriate because it specifically addresses revenge pornography (West’s F.S.A. § 784.049). Another example can be found in Delaware, which has labeled its state statute against revenge porn as “Violation of Privacy.” This may be viewed as more vague and ambiguous, as well as raise questions related to the potentially broad application of this law (Del. C. §1335). Similarly, the District of Columbia has labeled its statute as “Second Degree Unlawful Publication,” which is arguably one of the more ambiguous names for a revenge pornography law (D.C. ST § 22-3054).

Like the variation in statute titles, there is substantial variation in how many states define “Intimate Image,” or “Sexually Explicitly Photograph.” Some statutes fail to give a definition of sexual explicitly photography while others like West Virginia provide a specific definition. When looking at definitions of the materials (i.e., images, photographs, etc.) that are disseminated in a revenge porn case, 79.4% of state statutes explicitly defined “intimate image” or “sexually explicitly photograph” in their statute, while 20.6% of state statutes did not define “intimate image.” As an example, West Virginia defines intimate part images as: “a person’s genital, pubic area, anus or female post-pubescent breasts” (W. Va. Code § 61-8-28a). Similarly, Utah defines “Intimate Image” ...as

Any visual depiction, photograph, film, video, recording, picture, or computer or computer-generated image or picture whether made or produced by electronic, mechanical, or other means, that depicts: “male or female genitals or pubic area, with less than an opaque covering, a female breast with less than an opaque covering, or

any portion of the female breast below the top of the areola; or the individual engaged in any sexually explicit conduct” (U.C.A. 1953 § 76-5b-203)

Similar to definitions of the imagery that may be involved in a revenge porn case, states differ in the detail they provide in defining dissemination. Specifically, 61.8% of state statutes did not explicitly define dissemination/distribution in their statute, while 38.2% provided an explicit definition of the act of dissemination/distribution. An example of this is how New Hampshire’s statute is entitled “Nonconsensual Dissemination of Private Sexual Images” and defines the act of disseminate as

A person commits nonconsensual dissemination of private sexual images when he or she: purposely, and with the intent to harass, intimidate, threaten, or coerce the depicted person, disseminates an image of such person: who is engaged in a sexual act or whose intimate parts are exposed, in whole or in part... (N.H. Rev. Stat. § 644:9-a).

In comparison, Louisiana defines the act of “Non-consensual disclosure of a Private Image” as follows:

A person commits the offense of nonconsensual disclosure of a private image when all of the following occur: The person intentionally discloses an image of another person who is seventeen years of age or older, who is identifiable from the image or information displayed in connection with the image, and whose intimate parts are exposed in whole or in part (L.S.A.-R.S § 14:283.2)

Descriptive analyses revealed that most state statutes do not define consent but, rather, simply mention consent in the law. Of the 34 states with revenge porn statutes, 91.2% mention consent in their statute while only 2.9% of state statutes explicitly defined this concept. If the law mentioned consent, 91.2% of the state statutes specifically referenced consent in relation to the

dissemination of the sexually explicit image. Wisconsin is the only state to explicitly define consent within its revenge pornography statute as

...words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to the act. A person who has not attained the age of 18 is incapable of consent. The following persons are presumed incapable of consent...(W.S.A. § 942.09)

The rest of the states that mention consent refer to consent using ambiguous language. For example, Washington's revenge porn statute asserts that consent is based upon "the depicted person[']s" consent "to the disclosure" that any "reasonable" person "should know that disclosure" of the sexually charged image "would cause harm to the depicted person" (Washington § 9A-86-010). Washington's definition is problematic because it establishes the criminal act of revenge porn, yet shifts the responsibility to establish consent based on the offender's perception. This is not a reasonable person standard for the victim but rather for the offender. A more clear explanation of consent can be found in states like Arkansas which specifies the following: "the fact that an image, picture, video, or voice or audio recording was created with the knowledge or consent of the other person or that the image, picture, video, or voice or audio recording is the property of a person charged under this section is not a defense to prosecution under this section" (A.C.A. § 5-26-314). This exemplifies the ambiguous nature in which the definition and mention of consent varies among states in relation to revenge porn.

Related to definitions of consent, it is important to examine how states go beyond discussing consent in relation to the actual capture of images and link consent to the dissemination process. Minnesota and Nevada are two of the 31 states that explicitly mention consent in reference to the dissemination of the sexually explicit image. The declaration of

consent being necessary for dissemination is critical for revenge porn victims because it criminalizes the action of using others' intimate images for revenge purposes. However, the definitions for consent in reference to dissemination vary drastically. For instance, Minnesota has made it, "a crime to intentionally disseminate an image of another person who is depicted in a sexual act or whose intimate parts are exposed, in whole or in part, when: (2) The actor knows or reasonably should know that the person depicted in the image does not consent to the dissemination" (M.S.A. § 617.261) and Nevada defines consent in reference to dissemination as an individual or individuals who, "did not give prior consent to the electronic dissemination or the sale of the intimate image" (N.R.S § 200.780). Moreover, this exemplifies that the lack of uniform understanding and definition of dissemination makes the charging process in each state different and consequently produces different criminal outcomes.

Additionally, descriptive analyses revealed that most statutes stated there was a reasonable expectation of privacy when the image was sent. More specifically, 86.1% of statutes stated that there is a reasonable expectation of privacy while 13.9% of states did not mention a reasonable expectation of privacy. An example of this is illustrated in Arizona's statute, which says that "evidence that a person has sent an image to another person using an electronic device does not, on its own, remove the person's reasonable expectation of privacy for that image" (A.R.S. § 13.14250). Arkansas defines reasonable expectation of privacy differently than Arizona, however, Arkansas attempts to provide the same protections as Arizona. Specifically, Arkansas's statute states that:

The fact that an image, picture, video, or voice or audio recording was created with the knowledge or consent of the other person or that the image, picture, video, or voice or

audio recording is the property of a person charged under this section is not a defense to persecution under this section (A.C.A. § 5.26.314)

Looking further into the laws across states, if a state did not have a specific revenge porn statute some states would use other forms of criminal legislation to combat revenge porn. Indeed, 3.9% of states have permitted the use of a harassment statute in order to combat revenge porn perpetrators. Further, 11.8% of states with revenge pornography statutes reference other offenses or civil laws such as sexting, stalking or tort law within their revenge porn laws. In particular, 66.7% of statutes that mention other laws reference tort law, 16.7% mention sexting, and 16.7% mention stalking.

Table 2 Frequencies of Definitions

Variables	(N)	%
Name/Title of Revenge Porn Statute?		
Harassment	3	8.8
Violation of Privacy	4	11.8
Dissemination/Disclosing of an Intimate Image	23	67.7
Other (i.e., Unlawful Publication)	4	11.8
Does the law define/mention “intimate image” or “sexually explicit photography”?		
No	7	20.9
Yes	27	79.4
Is Dissemination/distribution explicitly defined in the statute?		
No	21	61.8
Yes	13	38.2
Does the Law Mention Consent?		
No	3	8.8
Yes	31	91.2
If yes, is consent explicitly defined?		
No	33	97.1
Yes	1	2.9
If the law mentions consent, is consent specifically referenced to in the disseminating of the sexually explicit image?		
No	3	8.8
Yes	31	91.2
Reasonable expectation of privacy/consent discussed in the process of dissemination?		
Yes	31	86.1
No	3	13.9
If there are not revenge porn statutes in the state are there any cases in the state related to the revenge porn (e.g., privacy, harassment, etc.)?		
Harassment	2	3.9
Not Applicable	45	88.2
Does the law mention another crime or civil law (i.e. either sexting, stalking or tort law) within the statute?		
Yes	6	11.8
No	45	88.2
If so, what law/crime is mentioned within the statute?		
Tort Law	4	66.7
Sexting	1	16.7
Stalking	1	16.7

The findings related to crime classification and punishments are provided in Table 3. States with revenge porn legislation have the ability to define the offense as either a misdemeanor or felony. As with most offenses, the classification of revenge porn is often dependent on the circumstances surrounding a particular case. For the current analyses, the punishment was coded based off of the highest classification possible and was identified based on what was clearly stated by the law in each state. As shown in Table 3, 54.3% of states with revenge pornography statutes stated that the highest classification for revenge porn was a felony, while 45.7% of states explicitly classified revenge porn as a misdemeanor offense. Looking at other factors that influence sentencing, the current analyses examined provisions for repeat offending. Only 29.7% of states outline specific provisions for special sentencing in the case of repeat offending in their laws. If there are special sentencing provisions, 72.7% of those provisions are felony convictions while 27.3% of the provisions are miscellaneous punishments these punishments ranged from multiple provisions, like fines and jail time, to adding an aggravating factor to sentencing considerations. For example, Florida has an established felony conviction for repeat offenders by stating “a person who has one period conviction for sexual cyber harassment and who commits a second or subsequent sexual cyber harassment commits a felony of the third degree” (West F.S.A. § 784.049).

Another key factor related to the prosecution of revenge pornography is the jurisdiction in which the case can be prosecuted. Jurisdictional information was discussed in 7.8% of the state statutes with 92.2% of states not mentioning jurisdiction. Louisiana permits criminal justice agencies to have jurisdiction depending on the case.

“Criminal justice agency” means any government agency or subunit thereof, or private agency that, through statutory authorization or a legal formal agreement with a

governmental unit or agency, has the power of investigation, arrest, detention, prosecution, adjudication, treatment, supervision, rehabilitation, or release of personas suspected, charged, or convicted of a crime; or that collects, stores, processes, transmits or disseminates criminal history records or crime information (L.S.A.-R.S. § 14.283.2)

Table 3 Frequencies of Punishments

Variables	(N)	%
What is the highest classification of the law?		
Misdemeanor	15	45.7
Felony	19	54.3
Jurisdictional information discussed?		
Yes	4	7.8
No	30	92.2
Are there provisions for special sentencing in the case of repeat offending?		
Yes	4	7.8
Not Applicable	23	70.3
If there are provisions for special sentencing in the case of repeat offending are the provisions: fines, misdemeanor, felony, etc.?		
Felony	8	72.7
Other	3	27.3

Discussion

The current study examines revenge porn statutes with regard to areas ranging from the specific definitions outlined by the law to the criminal penalties that perpetrators of revenge pornography can receive. Due the nature of this study, there is little to no prior research to compare or highlight the findings in this study because the current study focused on exploring and describing current legislation surrounding revenge pornography. According to the current findings, two-thirds of the United States have implemented legislation to address revenge porn. Findings indicate that the specific legal terminology and definitions, as well as penalties for perpetrators, and consequently protections afforded to victims, vary drastically across states. An

example of the disparities among state statutes is how only 2.9% of the United States in this study explicitly defined consent within their revenge porn statute. The lack of defined consent facilitates ambiguity and confusion in the prosecution of the offender. This may lead to situations where the victim has the burden to prove that she did not grant consent. The importance of this is underscored by the fact that consent is the center of the revenge porn discussion. The main argument both for and against the criminalization of revenge porn hinges on the ability of an individual to consent to the distribution of their sexually explicit image(s).

Despite some clarification provided by a few states, the definitions of consent are still unclear. For example, the definitions of consent in Washington and Arkansas' statutes are extremely ambiguous and confusing and, as a consequence, may make it difficult for victims to utilize the applicable legislation to combat their perpetrators. This can be seen when Washington declares that any "reasonable" person "should know that disclosure" of the sexually charged image "would cause harm to the depicted person" (Washington § 9A-86-010). This is a problem because "reasonability" is left up to the offender's interpretation of consent in terms of anticipating harm but is problematic in that this does not clearly address the issue of whether consent was actually granted to disseminate or not and leaves room for plausible deniability.

Arkansas presents additional concern by stating that consent is based upon "the fact that an image, picture, video, or voice or audio recording was created with the knowledge or consent of the other person or that the image, picture, video, or voice or audio recording is the property of a person charged". This leads to questions about whether the victim's original consent to the creation of an image/video automatically translates into consent to disseminate said image.

Overall, the issues identified by the current study highlight the need to have federal revenge

pornography legislation that more clearly references and defines consent due to the complex nature of revenge porn state statutes.

Additionally, a major distinction across state revenge pornography statutes are the titles of the statute. The title of the statute is significant when the name of the offense implies a particular connotation to those who potentially read the law, including victims, offenders, and criminal justice professionals. A statute used to combat revenge pornography named “Violation of Privacy” communicates a very different meaning than one labeled “Dissemination/Distribution of an Intimate Image.” This is because a “Violation of Privacy” statute appears to apply to diverse situations and many of these statutes are written in a vague, broad manner, thus one could interpret this privacy violation to apply to a variety of circumstances beyond a revenge porn scenario. In comparison, a law entitled “Dissemination/Distribution of an Intimate Image” is direct in terms of what it criminalizes and more clearly relates to revenge pornography. Further, the titles of statutes reflect the confusion in the law in terms of what behaviors are criminalized and the potential penalties specified by the law, as well as what legal concepts are relevant to the law such as the content of the imagery and dissemination. The variation evident in the name of the statutes alone begs the question of how serious revenge pornography is treated in some states from a legal perspective. Further, the connotation and denotation force an assessment of how the victims are safeguarded and the legal capability at which they are given to fight their cases not only in the states in which they reside, but also across state lines due to the involvement of the internet and its frequent use for dissemination of such imagery.

If a state did not have a revenge porn statute, some states would use other forms of criminal legislation to combat revenge porn. This underscores a need for expanded legislation to

specifically aid revenge porn victims in states that do not have a statute addressing revenge pornography. Another key finding of the study was that some states reference additional statutes in their revenge porn laws. It is promising to see these states recognize the complexity of these crimes and how these laws overlap with other sexually motivated or intimate partner violence offenses such as sexting and stalking.

If the state does not have a revenge porn statute or has weak implications for those who violate an existing revenge pornography law, then it makes it extremely difficult for victims to receive justice. An example of this is how only 34 out of 51 states have classified punishments for perpetrators who use revenge porn to victimize others. Specifically, 45.7% of the 34 states have misdemeanors as punishments, while 54.3% of those 34 states have felonies as the highest punishment explicitly specified by the law. As previously discussed, the treatment and injustice that sexual violence victims have experienced can be historically traced to a patriarchal hierarchy that has long been established in the United States through tactics of control like emotional and physical abuse, monetary instability, and inability for different sexes to achieve the same financial pay. These tactics still carry significance for the way that victims of revenge porn are treated (Barak et al., 2010). Victims of revenge pornography are often blamed for sending the sexually charged image and often cannot pay to combat their victimization due to the excessive financial burden that is placed upon them when pursuing justice via the criminal justice system. An example of this is how 17 states do not have a revenge porn statute, which forces victims of revenge porn to copyright their own sexually explicit images in order to get their sexually charged images removed. This illustrates the way in which numerous victims of revenge porn are treated. The states in which victims are not protected forces the victim to act without the aid of the state if they want to receive a form of justice. More specifically, revenge porn victims'

experiences with the criminal justice system can be tied to some of the obstacles intimate partner violence victims encounter. Often victims of intimate partner violence are blamed for not leaving or changing their situation, but in many cases these victims do not have the monetary resources or the ability (e.g., children involved, etc.) to walk away from their perpetrator. As previously noted, revenge porn victims report serious mental health consequences (Cyber Civil Rights Initiative, 2014) and many revenge porn victims compare their experiences to those who have experienced a physical, sexual assault (Jacobs, 2016).

The current study is not without limitations. One of the most obvious limitations is the inability to question victims and assess their experience with the application of the law. Future research should focus on expanding the focus of the current study by incorporating victims into the study to determine how the law on the books reflects the law in practice from the perspective of the victim. For example, perpetrators can be subjected to the highest classification of the law in the state in which they reside, yet prosecutorial discretion and plea bargaining, as well as judicial discretion in sentencing substantially affects the application of the law. Additionally, case laws help with interpreting statutes that tort law are still based upon. With this in mind, the current study's conclusions are restricted to an explicit interpretation of the law as written with the acknowledgement that the written law may not accurately reflect what is taking place in the real world. An additional limitation is related to the evolving nature of the law. State statutes are modified suddenly and precipitously. In fact, at the time of this study state statutes were continuously being modified. Thus, it is possible that statutes have been revised since the initial data collection. Future research should attempt to maintain validity through a continued analysis of state statutes in an effort to present the most up-to-date information as possible.

Despite the limitations, this study has important implications for policy and future research because it highlights the lack of consistency in legislation across states when dealing with crime. Notwithstanding the complex nature of this offense, the current study found that only 7.8% of the United States that have statutes against revenge pornography discuss jurisdictional issues in their existing legislation. In line with the existing research, the current study highlights a need for federal revenge porn legislation. The nature of this offense lends itself to federal legislation as much of the content involved in these cases is uploaded and shared via the internet. Compared to the federal government, most states do not have the resources necessary to prosecute each perpetrator who has uploaded a pornographic image out of revenge to a major web domain. Unfortunately, as previously noted, existing federal legislation, specifically Section 230 of the Communication Decency Act, has proven an ineffective legal avenue for victims of revenge porn at the federal level as it protects web domains from being prosecuted for the revenge porn uploaded onto their websites (47 U.S.C. § 230). With regard to future research, researchers should attempt to determine the success rate for revenge porn prosecutions in regions that have an established revenge porn statute. This could provide insight into weaknesses and strengths of existing laws.

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APPENDIX

A. Census Regions and Divisions of the United States



Census Regions and Divisions of the United States



VITA

Tessa Piety was born in Anderson, South Carolina, to Shahidah Habeeb-Ullah. She was adopted shortly after her birth. She is one of twenty-eight children. She was homeschooled in elementary school but continued education and ultimately graduating high school from Christian Academy of Knoxville. After graduation, Tessa attended Berry College where she became interested in criminal justice. Tessa participated in the Intercollegiate Studies Institute (ISI), played college soccer and focused on the furthering the humanity needs of others through her undergraduate thesis focused on insurance coverage for those with mental health disabilities. She completed her Bachelors of Science degree in May 2016 in Political Science. Tessa worked as a state and then federal correctional officer in Tennessee while enrolled at the University of Tennessee at Chattanooga before accepting a graduate assistantship at the University of Tennessee at Chattanooga in the Criminal Justice Program. Tessa graduated with a Masters of Science degree in Criminal Justice in May 2018 and received the outstanding graduate student for the department of social, cultural, and criminal justice (2017-2018). Tessa is continuing her education in Criminal Justice by pursuing a Ph.D. degree at Georgia State University.